

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**JODI C. MAHDAVI,**

**Plaintiff,**

**v.**

**NEXTGEAR CAPITAL, INC., *et al.*,**

**Defendants.**

**Case No.: 1:14-cv-00648-TSE-TCB**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
DEFENDANT P.A.R. SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant P.A.R. Services, Inc. (“PAR”), by undersigned counsel, under Fed. R. Civ. P. 56, and hereby requests that this Court enter an Order awarding it summary judgment as against all claims in Plaintiff Jodi C. Mahdavi’s Complaint, and in support thereto states as follows:

**STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

1. PAR hereby adopts and incorporates by reference the Statement of Material Facts Not In Dispute contained in the Motion for Summary Judgment filed by Defendant NextGear Capital, Inc. (“NextGear”).
2. PAR is a repossession company. *See* Deposition of P.A.R. Services, Inc. (“PAR Dep.”), pertinent portions attached hereto as **Exhibit One**, p. 6:4-5.
3. PAR repossessed the subject BMW at NextGear’s direction, delivered the vehicle to BW Manheim at NextGear’s direction, and has had no further involvement with the vehicle. *See id.* at pp. 35:6-38:4. Therefore, PAR does not have possession or control of the BMW and is not able to sell the vehicle.

4. PAR did not remove anything from the BMW, which now resides with BW Manheim. *See id.* at p. 34:15-22. There was only some paperwork and boxing gloves in the BMW of negligible value. *See id.* at p. 33:18-19.
5. There is no evidence that PAR's repossession ever breached the peace. *See Transcript of Plaintiff's Deposition*, pertinent portion attached hereto as **Exhibit Two**, at pp. 72:13-74:21 (describing circumstances of the repossession).

## ARGUMENT

PAR hereby adopts and incorporates by reference the Argument set forth in NextGear's Motion for Summary Judgment. As set forth therein, Plaintiff cannot show that she has good title to the BMW and is entitled to a return of the vehicle.

PAR is entitled to summary judgment as to Count I of Plaintiff's Complaint because PAR does not have possession or control of the BMW and is not able to sell the vehicle. Thus, it would be inappropriate to issue an injunction to prevent PAR from doing what it cannot do.

PAR is entitled to summary judgment as to Count II of Plaintiff's Complaint because PAR does not claim any right or title to the BMW. PAR merely repossessed the BMW at NextGear's direction, and NextGear has right and title to the BMW for the reasons stated in NextGear's Motion for Summary Judgment.

PAR is entitled to summary judgment as to the trespass component of Count III of Plaintiff's Complaint because PAR lawfully entered upon Plaintiff's property and repossessed the BMW pursuant to NextGear's legal claim to that BMW, and was permitted under the law to thereby repossess it. *See Va. Code § 6.2-2217*. Even under Plaintiff's own recollection, there is no evidence that PAR's repossession breached the peace or was otherwise inappropriately handled.

In addition, PAR is entitled to summary judgment as to the conversion component of Count III of Plaintiff's Complaint because Plaintiff cannot prove she has good title to the BMW, as set forth in NextGear's Motion for Summary Judgment. As to the personal property Plaintiff claims was in the BMW at the time it was repossessed, Plaintiff's unsubstantiated allegations, without more, are insufficient to meet her burden of proving that there was any personal property in the BMW other than the paperwork and boxing gloves of negligible value.

WHEREFORE, Defendant P.A.R. Services, Inc. respectfully requests that this Court enter an Order granting summary judgment in favor of P.A.R. Services, Inc. as against Plaintiff Jodi C. Mahdavi as to all counts of Plaintiff's Complaint, along with any other relief this Court deems just and necessary.

Dated: December 3, 2014.

Respectfully submitted,

P.A.R. SERVICES, INC.,  
By counsel:

/s/ James N. Markels

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of December, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF System, which will then send a notification of such filing (NEF) to:

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# **EXHIBIT ONE**



## Transcript of **APRIL MARIE RECTOR**

**Date:** November 17, 2014

**Case:** MAHDAVI v. NEXTGEAR CAPITAL, INC., ET AL

Planet Depos  
Phone: 888-433-3767  
Fax: 888-503-3767  
Email: [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)  
Internet: [www.planetdepos.com](http://www.planetdepos.com)

**DEPOSITION OF CORPORATE DESIGNEE, APRIL MARIE RECTOR  
CONDUCTED ON MONDAY, NOVEMBER 17, 2014**

2 (Pages 5 to 8)

<p>1            <b>PROCEEDINGS</b>  2            APRIL MARIE RECTOR  3            having been duly sworn/affirmed, testified as  4            follows:  5            <b>EXAMINATION BY COUNSEL FOR PLAINTIFF</b>  6       <b>BY MR. LEVINE:</b>  7        Q   Would you please state your name.  8        A   <b>Sure, it's April Marie Rector.</b>  9        Q   And who is your employer?  10      A   <b>PAR Services.</b>  11      Q   And where is PAR Services located?  12      A   <b>We're in Clinton, Maryland.</b>  13      Q   And do you work in Clinton, Maryland?  14      A   <b>I do.</b>  15      Q   And what's the address in Clinton?  16      A   <b>6504 Yochelson Place. And the zip code is</b>  17      <b>20735.</b>  18      Q   And what's your job title?  19      A   <b>Manager.</b>  20      Q   And what are your day-to-day  21      responsibilities?  22      A   <b>Day-to-day, just kind of watch over</b></p>	<p>5</p> <p>1            MR. MARKELS: Is there a question pending?  2        I'm sorry.  3            MR. LEVINE: I just asked her if she could  4            review it.  5        A   <b>Sure.</b>  6       <b>Okay. Yes.</b>  7       <b>BY MR. LEVINE:</b>  8        Q   Have you seen this document before?  9        A   <b>I don't recall seeing this one before.</b>  10      Q   Do you understand you're here as the  11      corporate representative for PAR Services?  12      A   <b>Yes.</b>  13      Q   And to give testimony on the subject  14      matters that are identified in this notice of  15      deposition?  16      A   <b>Yes. I've gotten so many documents on it,</b>  17      <b>so everything kind of looks the same; but I</b>  18      <b>understand why I'm here.</b>  19      Q   Sure. Now, the notice of deposition  20      identifies several subject matters that you're called  21      on to give testimony to. And are you here to give  22      testimony on each of these items?</p>
<p>1        <b>everything, any problems that come in I take care of,</b>  2        <b>handle the insurance. Just managing the office</b>  3        <b>employees, things of that nature.</b>  4        Q   What kind of business is PAR Services?  5        A   <b>It's a repossession company.</b>  6        Q   Does it do general towing or just  7        repossession?  8        A   <b>Just repossession.</b>  9        Q   And how long have you been at PAR Services?  10      A   <b>I've been there 15 years.</b>  11      Q   And how long have you been a manager there?  12      A   <b>About ten years.</b>  13      Q   So you were a manager in May of 2014?  14      A   <b>Yes.</b>  15      Q   And are you familiar with the facts and  16      circumstances of this case?  17      A   <b>Yes.</b>  18      Q   Okay. And I would like for you to take a  19      look at what's been marked as PAR 1.  20            (PAR Exhibit 1 was marked for  21      identification and attached to the deposition  22      transcript.)</p>	<p>6</p> <p>1        A   <b>In this deposition here?</b>  2        MR. MARKELS: To the extent that PAR knows  3        them.  4        A   <b>Yes, so whatever questions I can answer.</b>  5        MR. LEVINE: I'll just ask you, don't  6        instruct your witness. You can give an objection.  7        MR. MARKELS: I'm just saying, she can only  8        testify as PAR's representative as to what PAR knows  9        personally.  10       MR. LEVINE: I understand. That's a  11       direction telling your witness how to testify. You  12       can object, that's fine. I would appreciate it if  13       you would not give instructions like that.  14       <b>BY MR. LEVINE:</b>  15       Q   Are there any of the designations that you  16       are unable to testify to?  17       MR. MARKELS: I'm going to object as to  18       form. Go ahead and answer.  19       A   <b>Can you repeat that question one more time?</b>  20       <b>I'm sorry.</b>  21       <b>BY MR. LEVINE:</b>  22       Q   Sure. Of the subject matters that are</p>

**DEPOSITION OF CORPORATE DESIGNEE, APRIL MARIE RECTOR  
CONDUCTED ON MONDAY, NOVEMBER 17, 2014**

9 (Pages 33 to 36)

<p style="text-align: right;">33</p> <p>1       Q   And who is that?</p> <p>2       A   His name is Joseph Atchison.</p> <p>3       Q   Did PAR Services perform any kind of</p> <p>4       inventory of the contents of the vehicle?</p> <p>5       A   <b>When the vehicle initially came in, it was</b></p> <p>6       <b>locked, and it remained locked for several days,</b></p> <p>7       <b>until we received something in the mail stating -- it</b></p> <p>8       <b>was like a certified letter I think Ms. Mahdavi had</b></p> <p>9       <b>sent in stating that she had some money and jewelry</b></p> <p>10      <b>in the vehicle. And so it was at that time that we</b></p> <p>11      <b>had the vehicle -- because it's a very hard</b></p> <p>12      <b>vehicle -- when it's locked up, it's very hard to</b></p> <p>13      <b>gain access to.</b></p> <p>14      So once we received the certified letter,</p> <p>15      and I don't remember which one of our guys, a guy who</p> <p>16      worked for us, I don't remember which one it was,</p> <p>17      opened it up. I was out there when they opened it</p> <p>18      up. And the only thing that was in that vehicle was</p> <p>19      some paperwork and a pair of boxing gloves.</p> <p>20      Now, we could not -- did not gain access to</p> <p>21      the trunk.</p> <p>22      Q   So you were present when the car was</p>	<p style="text-align: right;">35</p> <p>1       Q   Who wrote down the inventory?</p> <p>2       A   I did.</p> <p>3       Q   Do you recall whether there was a child</p> <p>4       seat in the car?</p> <p>5       A   There was not.</p> <p>6       Q   How long was the BMW on PAR Services's</p> <p>7       property?</p> <p>8       A   I'm going to revert back to the documents</p> <p>9       here. Let's see. We repossessed it on I believe --</p> <p>10      this is a fax copy. It looks like May 20th. Yes.</p> <p>11      May 20th is the date it was repossessed and it was</p> <p>12      delivered to the auction on May 30th. So 5/20, 2014,</p> <p>13      until 5/30, 2014, is when it remained in PAR's</p> <p>14      possession.</p> <p>15      Q   Do you know why PAR Services had it for ten</p> <p>16      days?</p> <p>17      A   We generally -- whenever we repossess a</p> <p>18      vehicle, it generally sits on our lot until our</p> <p>19      client requests that we deliver it.</p> <p>20      Q   So who made the request that it be</p> <p>21      delivered?</p> <p>22      A   <b>Dave Freeman requested the delivery.</b></p>
<p style="text-align: right;">34</p> <p>1       opened?</p> <p>2       A   I was.</p> <p>3       Q   And how was it opened?</p> <p>4       A   It's called a break-in kit. It's a wire,</p> <p>5       and they have to -- there's a wedge that they use to</p> <p>6       kind of get the vehicle -- they have to create like a</p> <p>7       pocket so they can get a tool in that unlocks the</p> <p>8       vehicle.</p> <p>9       Q   And I'm sorry, did you say you don't</p> <p>10      remember who --</p> <p>11      A   I don't remember, no. I don't.</p> <p>12      Q   Okay. Do you have multiple employees who</p> <p>13      would use the kit?</p> <p>14      A   Yes, we do.</p> <p>15      Q   And what was done with the contents of the</p> <p>16      vehicle?</p> <p>17      A   The contents of the vehicle? They remained</p> <p>18      in the vehicle. We didn't take the contents out.</p> <p>19      They remained in the vehicle and the vehicle was sent</p> <p>20      to Manheim Auction. We notified NextGear what was in</p> <p>21      there and left it in there. We did not remove</p> <p>22      anything.</p>	<p style="text-align: right;">36</p> <p>1       Q   And his request was to take it to BW --</p> <p>2       Baltimore-Washington Manheim?</p> <p>3       A   Correct. BW Manheim, I get it confused</p> <p>4       too.</p> <p>5       Q   And who did Mr. Freeman make that request</p> <p>6       to?</p> <p>7       A   He made that request to me directly.</p> <p>8       Q   By telephone?</p> <p>9       A   Yes. I never met with Mr. Freeman in</p> <p>10      person during this whole process here.</p> <p>11      Q   Okay. Did you speak to Mr. Freeman at all</p> <p>12      about Mrs. Mahdavi's claim that she owned the</p> <p>13      vehicle?</p> <p>14      A   Yes. I contacted him, because Pentagon</p> <p>15      Federal Credit Union contacted us. So I called him</p> <p>16      and I said, "Dave, I have a credit union calling us</p> <p>17      saying that they own the vehicle, and they have faxed</p> <p>18      me over some information." And that's when Dave said</p> <p>19      "No, there's an ongoing suit that we have with her</p> <p>20      husband," and I didn't really get into it with him.</p> <p>21      I said, "I'll fax you this paper." He</p> <p>22      said, "Don't worry about it, you're fine on your end,</p>

# EXHIBIT TWO

Capital Reporting Company  
Mahdavi, Jodi C. 11-12-2014

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)

-----:  
JODI C. MAHDAVI, :  
: Plaintiff, :  
: vs. : Case No.  
: : 1:14-cv-0648  
NEXTGEAR CAPITAL, INC. :  
: and :  
P.A.R. SERVICES, INC., :  
: Defendants.  
-----:  
Arlington, Virginia

Wednesday, November 12, 2014

Deposition of:

JODI C. MAHDAVI

called for oral examination by counsel for  
Defendant, pursuant to notice, at the law offices  
of Levine, Daniels & Allnutt, 5311 Lee Highway,  
Arlington, Virginia, before Christy McGee, CSR, of  
Capital Reporting Company, a Notary Public in and  
for the Commonwealth of Virginia, beginning at  
10:00 a.m., when were present on behalf of the  
respective parties:

Capital Reporting Company  
Mahdavi, Jodi C. 11-12-2014

	70		72
<p>1 it, but I have no idea, like, how much it was.      2 Q Have you ever seen his tax returns?      3 A No, we don't file joint returns.      4 Q How long have you been filing separately?      5 A I don't think we've ever filed joint      6 returns.      7 Q It's also true that the \$12,466 that BW      8 Auto Outlet has has never been paid to PenFed,      9 right?</p> <p>10 MR. LEVINE: Objection, foundation, calls      11 for speculation.</p> <p>12 THE WITNESS: To my knowledge, it has not      13 been paid to PenFed.</p> <p>14 BY MR. BRAGDON:</p> <p>15 Q You have produced as part of Exhibit      16 Number 3 your statements from PenFed, and if you'd      17 like to go through them again, that's fine, but      18 would you agree with me that none of those      19 statements reflect any payment of \$12,466 to      20 PenFed?</p> <p>21 A They do not.</p> <p>22 Q Now, you did say that at one point your</p>		<p>1 insured for.      2 BY MR. MARKELS:      3 Q And that insurance was for a value,      4 correct?      5 A Yes.      6 Q And that value was pursuant to the      7 insurance company appraising the approximate value      8 of the Cartier watch?      9 A Yes.      10 Q Okay. If you have not yet given that      11 document to your counsel, I ask that you do so,      12 that it be produced in this case.      13 Now, during the date of the repossession,      14 do you agree that that occurred in the early      15 morning hours of May 20th of 2014?      16 A May 20th, yes.      17 Q Okay. Around, say, like 1:30 in the      18 morning or something like that?      19 A Somewhere around in there, yes.      20 Q You said that there were two gentlemen      21 who showed up?      22 A Yes.</p>	
<p>1 Cartier watch was appraised for insurance purposes?      2 A Uh-huh, yes.      3 Q And that you do have a copy of something,      4 one of those insurance documents that has that      5 appraisal value on it?      6 A The insurance value that it's insured      7 for.      8 Q Okay. Have you given that to your      9 counsel to be produced in this case as an indicator      10 of the Cartier watch's value?      11 A Yes.      12 MR. MARKELS: Has that been produced,      13 Counsel?      14 MR. LEVINE: I don't know. I'd have to      15 look and see what was produced.      16 MR. MARKELS: James, do you recall that      17 being in here?      18 MR. BRAGDON: We can address it, but I      19 haven't seen it.      20 MR. MARKELS: Okay.      21 THE WITNESS: There was never an      22 appraisal. It was just an insurance, what it's</p>	71		73

Capital Reporting Company  
Mahdavi, Jodi C. 11-12-2014

<p>1        Q    Okay. He hadn't told you where he was?</p> <p>2        MR. LEVINE: Objection, asked and</p> <p>3        answered.</p> <p>4        THE WITNESS: No.</p> <p>5        BY MR. MARKELS:</p> <p>6        Q    All right. Now, to your knowledge,</p> <p>7        nobody in any vehicle or on foot pursued the men</p> <p>8        who repossessed your car?</p> <p>9        A    No, my husband met up with the police and</p> <p>10      the men, the people who had the car.</p> <p>11      Q    Now, you said as this was going on you</p> <p>12      called the police, correct?</p> <p>13      A    No, I told the men standing there to</p> <p>14      leave, that I was going to call the police, and</p> <p>15      that's when they left.</p> <p>16      Q    Did you ever -- did you call the police</p> <p>17      at that time?</p> <p>18      A    No, I hung up the phone. They left --</p> <p>19      they were leaving. I called my husband and said</p> <p>20      that they left. That's when he got on the phone</p> <p>21      with the police and they tracked them down.</p> <p>22      Q    To your knowledge, have the police taken</p>	<p>74</p> <p>1        MR. BRAGDON: The P.A.R. one.</p> <p>2        THE WITNESS: It's this one.</p> <p>3        MR. LEVINE: Exhibit 2 is how we have it.</p> <p>4        MR. MARKELS: Oh, you're on another</p> <p>5        exhibit. I thought it was switched around. That's</p> <p>6        fine.</p> <p>7        THE WITNESS: Which page are we on?</p> <p>8        MR. LEVINE: Page 5.</p> <p>9        BY MR. MARKELS:</p> <p>10      Q    Page 5. Page 5 of Exhibit 2. Now,</p> <p>11      although the copies that we have before us are not</p> <p>12      signed by you, you agree that you did sign these</p> <p>13      particular answers to these supplemental</p> <p>14      interrogatory answers, right?</p> <p>15      A    Yes.</p> <p>16      Q    Now, in your supplemental answer you</p> <p>17      state that you received title for the BMW. Do you</p> <p>18      see that?</p> <p>19      A    Yes.</p> <p>20      Q    Now, when you say you received title for</p> <p>21      the BMW, you mean that what was in Exhibit 3 as</p> <p>22      Mahdavi 1 was received to you in the mail, correct?</p>
<p>1        any action against P.A.R. Services or NextGear or</p> <p>2        anybody else with regard to that car?</p> <p>3        A    Not to my knowledge.</p> <p>4        Q    Do you know whether your husband was a</p> <p>5        salaried employee of BW Outlet or was on</p> <p>6        commission? Do you have any idea?</p> <p>7        A    I don't know.</p> <p>8        Q    Was he responsible for paying any of the</p> <p>9        household obligations?</p> <p>10      A    He pays the mortgage.</p> <p>11      Q    That's the only thing he's in charge of?</p> <p>12      A    Yes.</p> <p>13      Q    Now, let's look at Exhibit Number 1, your</p> <p>14      answer to Interrogatory No. 7, which is on Page 5.</p> <p>15      Do you see that this is Interrogatory No. 7 about,</p> <p>16      "Set forth all facts in support of the allegations</p> <p>17      of Paragraph 31 of your complaint." Looking at</p> <p>18      Exhibit Number 1.</p> <p>19      MR. LEVINE: Exhibit Number 1. You mean</p> <p>20      Exhibit 2?</p> <p>21      MR. MARKELS: I'm looking for Jodi</p> <p>22      Mahdavi's Supplemental Responses to P.A.R Services.</p>	<p>75</p> <p>1        A    Yes.</p> <p>2        Q    And we already talked about you did not</p> <p>3        file any application or receive prior title to the</p> <p>4        BMW at any time, correct?</p> <p>5        A    Yes.</p> <p>6        Q    All right. If you would turn to Page 6</p> <p>7        of that same -- of Exhibit 2, you see where under</p> <p>8        the supplemental answer it says, "Subject to and</p> <p>9        without waiving the prior objections, on or about</p> <p>10      May 21, 2014, I spoke to Deb McCloud on the</p> <p>11      telephone about the BMW being repossessed and she</p> <p>12      transferred my call to Kerry Howard." Do you see</p> <p>13      that?</p> <p>14      A    Yes.</p> <p>15      Q    Are you sure that was on the 21st and not</p> <p>16      on the 20th?</p> <p>17      A    Yes. The 20th was the day the car was</p> <p>18      taken.</p> <p>19      Q    Right, the very early morning of the</p> <p>20      20th, right.</p> <p>21      A    Yes.</p> <p>22      Q    So you did not contact PenFed the entire</p>